

July 16, 2008  
NOTICE OF REGULAR MEETING  
AND PUBLIC HEARING MEETING OF THE  
BENTON COUNTY PLANNING BOARD

WHEN: July 16, 2008

TIME: 5:30 p.m. The Benton County Planning Board will meet to receive Public Comments on any of the proposed projects on the agenda.

PLACE: Benton County Administration Building, 215 East Central Avenue  
Quorum Courtroom, 3rd Floor (Suite 324)  
Bentonville, AR 72712

**MINUTES FOR REGULAR PUBLIC HEARING**

**1. Call to Order**

**2. Roll Call**

The following Benton County Planning Board members were present: Scott Borman, Mark Gray, Caleb Henry, Bill Kneebone, Tim Sorey, and Heath Ward. Adele Lucas was absent. The following Benton County Planning Office staff members were present: Ashley Pope, Ronette Bachert and Karen Stewart.

**3. Disposition of the Minutes of June 4, 2008 technical advisory committee meeting and the June 17, 2008 public hearing meeting as distributed**

*Mr. Kneebone made a motion to accept the meeting minutes as distributed; Mr. Borman seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward all voted in favor of the motion; the motion was passed.*

**4. Reports of Planning Board members**

There were no reports from any of the Board members.

## 5. **Public Comment**

Mr. Sorey opened the floor to public comment; he asked that anyone wishing to speak on any of the agenda items keep their comments brief and to avoid being repetitive.

Lane Gurel, Box 660 in Rogers, thanked the Board for their time. He stated that from the beginning, the Grandview Heights project had always been about moving infrastructure where it did not exist; he stated that whether this was wise, profitable and could be done without harming the environment was questionable. He asserted that the project did not have enough funding and that the developers should have been paying as the work was being done. He pointed out that the developers failed to pay delinquent taxes on the property.

Mr. Gurel stated that the project was very speculative from its beginning; he said that anyone who invested in the project should have been aware of the risks, so it should not have been a surprise if the condominiums did not get built. He did not feel that financial hardship should be considered a valid reason for a time extension or variance request.

Mr. Gurel stated that projects that had been granted time extensions in the past had either already met outstanding stipulations or did not require ADEQ approval of a wastewater disposal system. He added that this project failed to obtain the approval of ADEQ.

Carole Westby, 13471 Lookout Drive in Bella Vista, stated that she would complete Mr. Gurel's statements. She stated that in his letter requesting time extension, Mr. Little claimed that 80% of the infrastructure for the project is complete. She said that Mr. Gurel had flown over the site, taking photographs, regularly up until the dirt work stopped and that nothing had happened since the last photographs were taken. She stated that infrastructure is more than partial dirt work and asserted that Mr. Little's letter had been misleading.

Ms. Westby stated that none of the utilities, offsite road improvements or foundations are in place. She added that the ground is not stabilized and that there is excessive erosion. She said that Mr. Little's claim that 18 months of substantial work has been done on the property is misleading; she stated that there has only been 4 months of work done in the last 18 months and none of it had taken place in the last 12 months.

Ms. Westby respectfully requested that the Planning Board review the ten stipulations that were originally placed on the project and decide whether or not the applicant could complete those stipulations in a timely manner. She stated that only one of the ten stipulations had been completed in the last two-and-a-half years: "the SWPPP permit from ADEQ, not to be confused with the wastewater

treatment permit, which was applied for but not approved... The most important stipulation on the list is the completion bond.”

Bill Millager, 12304 Cannon Road in Rogers, stated that the financial aspects of the Grandview Heights project have been “disastrous,” adding that “liens and lawsuits abound”. He pointed out that no completion bond had been posted. He said that the land is very steep, has had “massive dirt work” done and that the silt fencing is either absent or inadequate. He stated that the detention pond onsite is either very close to or over the Corps line. He stated that an article in the Morning News, possibly by Scarlet Sims, stated that “ADEQ has reported significant environmental concerns about the project.”

Mr. Millager stated that he had seen the plans for the sewage disposal system and called the proposed system “totally insecure, unreliable”. He stated that should the power fail or any of the controls in place fail, “Any failure of any element would really be a disaster, unless there are redundant things that nobody had really planned for for sure.”

Mr. Millager also stated that there are concerns about the Grandview Heights project causing property values to decrease. He stated that he had heard Mr. Gurel say that he had not sold very many lots in the area, which Mr. Millager felt could be due to the proposed project. He concluded by saying that “Grandview Heights, in my view, does not meet any rational test for further time extension.”

Pat Timmons, 72 Riviera Drive in Rogers, stated that the Grandview Heights project should not be granted a time extension for a few reasons, the first reason being that the Board would be setting a new precedent regarding time extensions that disregards the rules on time limitations. She stated there is still a lot of work to be done and that many of the stipulations had not yet been addressed. She expressed concern that the applicant might request that some of the stipulations be withdrawn and that the Board might grant such a request due to a claim of financial hardship by the applicant.

Mrs. Timmons stated that she had spoken with “the enforcement board part of the water division” of ADEQ and that ADEQ had done an inspection of the site in March of 2008 (right before all of the rains in Benton County). She stated that a letter dated May 22nd, 2008 had been sent to the developers regarding issues with the site; she added that ADEQ would be reviewing the developers’ response to their letter in the next few weeks if the developers reply. She asked that the Board require a copy of the developers’ response to the ADEQ letter.

Mrs. Timmons concluded by stating that there is no way for the applicant to guarantee that the project will not harm Beaver Lake and asked the Board not to grant the time extension.

Cheryl Murphy, 15147 Lakewood Drive in Rogers, stated that she would finish reading Mr. Gurel's statement (picking up where Ms. Westby left off), then make a statement of her own.

Ms. Murphy reiterated that the most important stipulation regarding the Grandview Heights project is the completion bond and that their ability to obtain a bond depends on being able to prove "substantial financial strength." She asserted that "with liens, foreclosures and lawsuits" the developer was in no position to meet the requirements and that the possibility of new financial backing was not reason enough to grant a time extension.

Ms. Murphy concluded Mr. Gurel's statements by saying that "the residents of this county are glad that there is not a half-framed steel structure rusting out on the lake at this point." She then stated that when this project was reviewed originally the Board placed many stipulations on the project; she pointed out that only one of the stipulations had been met. She felt that this should be taken into consideration, since the applicant had had two years to work on the list. She stated that this lack of action was proof that the developers were not firmly committed to the project.

Tom Jones, 16180 Black Oak Lane in Rogers, said that it appears that E & S Development is not adhering to its own best management practices. He pointed out that ADEQ had denied the developers' application for their proposed wastewater treatment facility; he stated that "there is not even a rain gauge on the property anymore to measure the amount of rainfall." He reiterated that the silt fences are down and the detention pond is full. He stated that E & S had been notified of all of these issues and had failed to take action. He asserted that the site is an abandoned project and urged the Board to deny the time extension request.

Jim Gately, 9360 East Lakeshore Drive in Rogers, wanted to know why the developers of Grandview Heights had not worked on satisfying any of the stipulations during the last two years. He expressed concern that the Board might consider financial hardship as a basis for granting the time extension and said, "I'm not sure the Planning Board should be in the business of worrying about financing for a project." He stated that if the Board did consider financial aspects, they should research all of the lawsuits and liens on this project. He stated that the Board should look over all of the history of this project and all of the unfulfilled assurances. He gave his opinion that the Board should not even consider an extension of this project.

Mr. Sorey asked for any further public comment on any of the agenda items; there was none. Public comment was closed.

6. **New Business:**

A. Large Scale Development - **Gentry Fire Department Cherokee City Substation** - 24430  
Cherokee Road, Gentry - Gardisser Construction

The outstanding stipulations from the TAC meeting were:

- Topographic information and the quadrangle map must be submitted as part of the large scale application.
- Staff will check the ITE manual to see if any studies had been done on a volunteer fire department.

Travis Gardisser of Gardisser Construction represented the large scale development request.

Mr. Gardisser stated that he had the topographic information requested by the Board; Mr. Sorey asked him to submit it to the Board.

Mr. Sorey stated that the Board had been presented a simple sketch of this project and had asked for more detail; Ms. Pope confirmed this and added that the Board had requested a topographic quadrangle map since the drainage study requirement had been waived on this project (as it had been on other similar projects).

Ms. Pope stated that site observation indicated that the site is relatively flat with little fall; she stated, "The impervious surface will definitely increase runoff, but I don't believe it's to an extent to cause a drainage problem offsite." She pointed out, however, that she is not an engineer.

Mr. Borman asked if this had been the only outstanding stipulation; Ms. Pope stated that it was. She added that this application is consistent with other applications by volunteer fire stations received in the past.

*Mr. Ward made a motion to approve the large scale development; Mr. Borman seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; Mr. Henry voted against it. The motion was passed.*

B. Large Scale Development - **Cowboy Swap & Sell** - 21132 West Highway 72, Gravette - W/R Consulting

The outstanding stipulations from the TAC meeting were:

- The applicant must contact Benton County Planning Staff or the City of Gravette if any permanent structures are added to the property.

- Install a second culvert for the proposed second driveway
- Submit a request to waive the items not submitted

Frank and Norma Farrer, of 10804 Sagamore Lane in Bentonville, represented the large scale development application.

Ms. Pope reviewed the outstanding stipulations. She stated that none of the following had been submitted to Staff: the drainage report, erosion and sediment control plan, solid waste contract, public utilities service agreement, fire service letter, and a letter from the Benton County Fire Marshal.

Ms. Pope added that the adjacent landowners, existing monuments and the surveyor's certificate were not shown on the site plan. She then asked if Mrs. Farrer had paid the large scale development fee had been paid yet; Mrs. Farrer stated that she had not been asked for it. Ms. Pope stated that that could be handled at Staff level.

Mr. Sorey stated that since no land will be disturbed other than the entrances - which will be require a permit from the Highway Department - the drainage study, erosion and sediment control plan and ADEQ permits would not be necessary. He stated that any of the letters that Ms. Pope mentioned would be necessary. Ms. Pope reviewed the required letters: solid waste contract, public utilities service agreement, fire service letter, and a letter from the Benton County Fire Marshal. Mr. Henry added that they would also need the AHTD permit.

Mrs. Farrer stated that she had contacted the servicing fire department, but that since they were a volunteer organization, they would have to get back to her regarding the required letter. She added that the Highway Department had given them an application, which she would fax back to them.

Ms. Pope stated that the only other condition of approval requested by Staff would be that the applicant report back to the Board in six months.

*Mr. Borman made a motion to approve the large scale development, subject to the outstanding stipulations; Mr. Kneebone seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; the motion was passed.*

- The applicant must contact Benton County Planning Staff or the City of Gravette if any permanent structures are added to the property.
- Install a second culvert for the proposed second driveway
- Submit a copy of the solid waste contract to Staff

- Submit a copy of the public utilities service agreement
- Submit a letter from the servicing fire department stating that they will provide fire service
- Submit a letter from the Benton County Fire Marshal stating his opinion of the project
- Submit a copy of the AHTD permit
- The applicant must report back to the Board in six months

C. Preliminary Plat - **Spavinaw Creek Ranch** - 8690 Highway 43, Decatur - Civil Design Engineers

The outstanding stipulations from the TAC meeting were:

- Due to the property's location in a floodplain Zone A conduct a flood study or split the parcel from the parent tract at an elevation above the 100-year floodplain elevation.
- Obtain the approval of the Health Department for the wastewater treatment and lot sizes
- Correct the annotated acreage on Lot 6
- Split lot 19 into two separate lots; also show the "big bulk lot" (green space) owned by the POA as a numbered lot(s).
- Turn the stub street by Lots 6 and 7 into a T intersection with an easement only for Road 2. Remove Road 2 from the plat.
- Annotate how residents will access the creek on the property.
- Submit the planned profiles for the roads
- Submit drainage analysis and culvert designs for the roads
- If the property is split due to flood zone issues for Phase I, all improvements need to be located on the project property, or permission easement(s) needs to be indicated.
- Submit a copy of the hydraulic study of the 4" water line
- Since the water line will not meet the code for fire flow, installation of sprinkler systems in the houses will likely be a condition of approval.
- The Benton County Fire Marshal must approve the waiver request for the extended cul-de-sac length.

Ferdi Fourie of Civil Design Engineers represented the Preliminary Plat application.

Ms. Pope stated that the applicant claimed that the flood study had been done and included in the drainage study; she noted that a flood study is not normally done in a drainage study. She asked the applicant if they had split the property; Mr. Fourie stated that they had not.

Ms. Pope stated that, as the floodplain administrator, she would have to verify the information that was submitted; she stated that she was not sure that the submitted material was what was requested. She then asked if any preliminary information had been received from the Health Department; Mr. Fourie stated that nothing has been received, but that it had been submitted and is currently under review.

Ms. Pope stated that the Benton County Soils Manual shows that the limitations of the soils onsite are moderate for septic tank systems, so she did not anticipate any issues with obtaining Health Department approval, but she reiterated that no preliminary information had been submitted to Staff.

Mr. Sorey asked when the new information had been submitted to Staff; Ms. Pope stated that it had been submitted on July 14th. Mr. Sorey indicated that the late submittal did not allow the time necessary to review all of the information.

Ms. Pope stated that the annotated acreage on Lot 6 had been corrected; lot 19 had been separated into two lots; the stub street was not removed from the plat - a cul-de-sac was added instead and an annotation was added that the cul-de-sac will be the means to access the creek. Ms. Pope stated that her comments on the last item would not be favorable; she noted that it would provide access to the creek that is not planned out properly. She did not want to promote haphazard use of the floodplain area. She noted that the drainage had been submitted.

Mr. Borman asked who would supply the water to the development; Mr. Fourie answered that the City of Gravette would be supplying water. Mr. Borman asked if the applicant had received a letter of approval from the City of Gravette; Mr. Fourie stated that he had. Ms. Pope noted that nothing had been submitted to Staff. Mr. Borman asked if the applicant had received approval for their water line extension; Mr. Fourie stated that it was still under review by the Health Department.

Mr. Borman asked about the wastewater disposal; Mr. Fourie stated that individual septic systems would be used. Mr. Borman questioned whether it was wise to use septic systems that close to Spavinaw Creek; Mr. Fourie stated that he believed that they had adequate space, adding that they had 18 one-acre lots on a 42-acre site. Mr. Borman asked if test pits had already been dug; Mr. Fourie stated that they are scheduled to dig the test pits and that it would be on the final plat.

Mr. Borman stated that he was not comfortable with the project given that no test pits have been dug, the character of the soils in the area and that Spavinaw Creek already has issues. He asked if the applicant had considered decentralized waste disposal systems; Mr. Fourie stated that he knew quite a bit about decentralized systems, but did not feel that one would be appropriate for this project. Mr.



Borman said that it was his opinion that the project had been brought to the Board prematurely. Mr. Fourie said that he had thought that this information would be presented at final plat, since he would be unable to obtain building permits without Health Department approval.

Mr. Sorey pointed out that the Board was being asked to approve the construction plans, so the detailed information was required. Mr. Sorey then stated out that he had been looking at the plans and noticed that there were still roads that were only 15 feet wide; he also noted that Mr. Fourie had told the Board at the TAC meeting that there would be no grade changes, but Mr. Sorey noted that there were graded changes of over three feet in the plans. He stated that he felt that the plans were rushed and that they required more work. He also noted that the Board would need more time to “digest” the information. Mr. Borman and Mr. Ward both concurred.

*Mr. Kneebone made a motion to table the preliminary plat until the next TAC meeting; Mr. Borman seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; the motion was passed.*

#### **D. Lot Split - Rocky Branch Farms, Lot 10 - 8455 Ridgecrest, Rogers - Ramsey Surveying**

The outstanding stipulations from the TAC meeting were:

- Clearly show all access easements on the plat, ensuring that utility easements are well-marked
- Clarify the notes for access easements 1 and 2

Ann Raebel of 8455 Ridgecrest in Rogers represented the lot split application.

Ms. Pope reviewed the outstanding stipulations while Mrs. Stewart handed out the revised plats that had just been submitted to Staff.

Ms. Pope stated that the question had been regarding the location of the easements; she noted that the easements somewhat parallel the driveway. She stated that Mr. Ramsey had clarified the location of the easements with a dashed line on the plat.

Mr. Sorey asked if any of the Board members remembered having a conversation regarding a driveway that went off of the property to the north (he noted that it does not necessarily apply to the lot being split); Mr. Ward stated that it was an existing situations that the Board had discussed, but then dropped, since the property owner had purchased the property that way.

Ms. Pope said, “I think the intent of the easements is to allow 10A to access parts of 10B.” Mr. Ward asked if there was a boat dock on the property; Mrs. Raebel confirmed that there is. Ms. Pope

questioned why there was no easement for the last gravel driveway to the west (on lot 10B); Mr. Sorey asked the applicant if she had noticed that on her plat. Mrs. Raebel stated that the new lot being created would not have an easement going down the gravel driveway. Mr. Sorey that access to the existing house and to the lake is not shown on the plat.

Mrs. Raebel asked if Mr. Ramsey had not clarified the easement; Ms. Pope stated that Mrs. Raebel could leave it however she wanted to, but that currently, "the gravel driveway here at the end - he's not indicating that an easement is there." Mr. Gray stated that the surveyor addresses this in the notes, indicating that the property at that point is too steep for vehicles; he did not think it was necessary to require the easement.

Mr. Sorey asked if that area was what the applicant used to access the dock; Mrs. Raebel indicated that they had to walk because they could not drive across the Corps line. Mr. Sorey pointed out that access is not only for vehicles; should they have a disagreement with the owner of the newly-created lot, they could be denied access across the property to the boat dock.

Mrs. Raebel asked for clarification of whether or not the document that she had just submitted provided her with access to the lake; Mr. Gray stated that they do not have access all the way to the lake according to that document.

*Mr. Kneebone made a motion to approve the lot split, subject to stipulations and working out the easement issues; Mr. Borman seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward voted in favor of the motion; the motion was passed.*

#### E. Preliminary Plat - **Walker Meadows** - Walker Road, Siloam Springs - James Surveying

The outstanding stipulations from the June 4th TAC meeting (when this project was last discussed) were:

- Clarify whether roads are to be dedicated to the County or are proposed for private maintenance
- Submit private road disclosure statement if roads are proposed for private maintenance
- Submit road construction plans if roads are proposed for public maintenance
- Submit access approval from the County Road Department
- Submit a drainage report
- Submit Health Department approval of the subdivision

- Note adjacent landowners on the plat
- Note setbacks on the plat
- The plat must be signed by the surveyor
- Submit a letter from the Lincoln Water Department acknowledging that they will provide water to the development
- Correct the scale of the drawing from 1"/200' to 1"/100'.

Mike James of James Surveying represented the preliminary plat application for Mr. Leon Davis.

Mr. James stated that he believed that he had submitted all of the required items, such as the private road disclosure and a drainage study proposal prepared by Mr. Ron Tracy.

Ms. Pope went over the outstanding stipulations, noting that Mr. James has submitted the required documentation except for some of the Health Department information; the letter from the Health Department states that "the one-acre lots are feasible for three-bedroom homes," but does not indicate whether or not the other lots will perc properly.

Ms. Pope asked Mr. James if this application is only for Phase I; he stated that it is. Mr. James elaborated that none of the interior roads will be built during Phase I, but as some of the lots sell, the applicant will bring Phase II before the Board. Mr. Sorey asked Mr. Henry's opinion of whether any drainage design would be necessary; Mr. Henry stated, "No, it's just a basic rundown of pre and post." Mr. Sorey pointed out that the Board would need the drainage information before the applicant built any roads.

Mr. Sorey asked if Mr. Davis would be putting in curb and gutter or asphalt edged pavement; Mr. James indicated that it would be asphalt. Ms. Pope asked which County Road is on the north side of the project; Mr. James stated that it is Fullerton Road and stated that he would update the information on the plat.

Ms. Pope asked if the right-of-way for Walker Road was being dedicated to the County; Mr. James stated that it is and that a 50-foot right of way was dedicated. Ms. Pope asked that it be indicated on the plat that 50 feet is being dedicated per the plat; Mr. James stated that the legal description describes this and he stated that these are existing County Roads. Mr. Sorey said, "The problem is where your property boundary is in relationship to the centerline of that road, because it's on prescriptive easements... not any dedicated right-of-way, and if your boundary actually goes to the opposite side of the road, as opposed to the centerline, you ultimately give up more than your fair share... so we need to know... where the centerline falls in relationship to your boundary." Mr. James stated that he would research the matter.

Ms. Pope asked if both Fullerton and Walker Roads are unpaved; Mr. James answered that they are both gravel roads. Ms. Pope asked if the Board saw any need for improvement of the roads. Mr. Sorey asked how far away the nearest pavement was located; Ms. Pope indicated that it is the highway. Mr. Davis stated that Fullerton Road is chip and sealed and has been maintained and turned into asphalt over time up to the intersection with Walker Road. He stated that Walker Road is a County-maintained gravel road.

Ms. Pope stated that in the past, the most that the Board has required is half-street improvements; Mr. Sorey said that it might be possible for Mr. Davis to reach an agreement with the County Road Department to pave Walker Road; Mr. Davis indicated that he would like to do that and that he had already been in contact with the County Judge regarding this matter. Mr. Sorey requested that the applicant submit a letter to Staff from the Road Department regarding the paving agreement.

Staff requested that approval of the project be contingent upon receiving the approval of the Department of Health for Phase I of the subdivision. Mr. Davis stated that Rebecca Corbitt and her husband had both been out to the site several times; he said that they have inspected the test pits (between rains) and found all to be favorable, so he did not anticipate any issues.

Ms. Pope stated that Staff would need the final approval of the Health Department and the letter of agreement from the County Road Department regarding the paving of Walker Road.

Mr. Henry pointed out that the drainage report that he received did not have the engineer's seal and signature; Ms. Pope said that that would also be required. Mr. Henry noted that the report states that a SWPPP (stormwater pollution prevention plan) would not be necessary for the site, but he stated that he would like documentation from ADEQ to that effect. Mr. Sorey pointed out that normally ADEQ requires that an NOI ( Notice of Intent ) and the SWPPP for phased projects.

*Mr. Borman made a motion to approve Phase I of the project, subject to the outstanding stipulations; Mr. Ward seconded the motion.*

*Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey, and Mr. Ward all voted in favor of the motion. The motion was passed.*

- The applicant must submit the final approval of the Health Department
- Submit a letter of agreement from the County Road Department regarding the paving of Walker Road
- Submit a drainage report with the engineers signature and seal

- Submit documentation from ADEQ stating that a stormwater pollution prevention plan will not be necessary for the site

F. P.U.D. Time Extension Request - **Grandview Heights** - Guyll Ridge Road, Rogers -

Courtney Little

The outstanding stipulations from the November 16th, 2005 public hearing meeting (when this project was last discussed) were:

- Letter of agreement between developer and County Road Dept. for accessing on and off County road. (Provide a letter from the County Road Department that approves the entrance to the project on the county road.)
- Fire letter. (Provide a letter from the fire department that states they will provide fire protection to the project.)
- ADEQ permit. (Provide an approved Arkansas Department of Environmental Quality permit for the wastewater treatment system proposed on-site.)
- Storm water permit. (Obtain a stormwater pollution prevention plan permit from Arkansas Department of Environmental Quality.)
- Copy of covenants when recorded for file. (Submit a copy of the proposed covenants for the project.)
- Label the turn around on plat. (Label the areas on the entrance road and within the site that will be used for turn-arounds for emergency vehicles.)
- Show more detail of fire wall and where the Condo's tie in together. (Provide architectural drawings that detail the firewall separation within the building.)
- Completion bond. (Provide a completion bond to guarantee the completion of the project and to prevent an unfinished project.)
- Building codes – ICC approved and agreed upon by the Planning Office. Provided and paid for by developer. (The building must be constructed according to International Code Council standards and approved by the Planning Department. The applicant must pay for the inspection of building by a private inspector.)
- Road Issues. (The applicant must agree to improve the county road(s) to the project in an agreement with the County Road Department.)

Courtney Little of the Little Law Firm represented the Planned Unit Development time extension request.

Mr. Little stated that the applicant had “good cause” to request a time extension:

**1. A substantial amount of work had been done on the project - 2 million dollars' worth.**

He stated that he had provided documentation to the Board showing the engineer's details on the project. He admitted that only about 12% of the road work is done, but stated that a significant amount of work has been done on the drainage, SWPPP plan, dirt moving, demolition, and excavation. He stressed that 2 million dollars had been invested in the infrastructure of the project.

He stated that all but \$120,000 of the cost of this work has been paid.

**2. The credit crunch due to the economy has created a lack of funding.**

Mr. Little stated that credit has tightened worldwide. He stated that his clients have been delayed by litigation against the project and the market has fallen apart in the meantime, making it very difficult to secure financing for the project. He stated that his clients would have been able to secure financing more easily had they not been in the middle of litigation when the market was good.

**3. If the Board should choose not to grant the time extension, it would send a negative message to other developers.**

Mr. Little stated that the message that would be sent by denying this time extension would be that if anyone opposes a project, they could delay it for so long as to make it impractical and developers would have to give up. He stated that if a project's extension request falls within the rules of Benton County, then it should be granted, regardless of whether or not there is opposition to the project. He stated that if the project was approved it might be one that people would see the benefit of it after it was built.

**4. There is no record of any other time extension denials by the Benton County Planning Board.**

Mr. Little stated that Staff's report to the Board regarding this project states that Grandview Heights is a different kind of project and he readily admitted that it is, but he felt that there was some misinformation regarding how far along they are on the project. He gave the example that the application to DEQ was made, they had no issue with the proposed decentralized system, and they were ready to approve the application except that they needed financial assurance that the applicant was unable to provide. He stated that this was because “somebody that owns the actual land under the system has to operate it.” He stated that neither a POA (property owners association) nor an HPR (???) is equipped to handle the operation of a decentralized system; he added that original plan had been to have the installers of the system maintain it, but that the developers could not “hand off a piece of that property to them, which

we were going to give them to be operated and do that with, as we're trying to get credit..." due to the credit crunch.

Mr. Little then addressed some of the concerns of those present. He stated that there had been discussion of a completion bond for the project, but stated that the County is not in a position to become the owner of or take over the project. He stated that the completion bond that was being required was almost impossible; he stated that the developers' understanding was that they were to post a construction bond for the improvements to ensure that the infrastructure was completed and that there would be a payment and performance bond to ensure that there would be no liens on the project. He reiterated that a performance bond was not what the developers understood to be required; he stated that he did not believe that a completion bond was what was agreed to.

Mr. Little stated that the developers were still in favor of off-site improvements, such as a fire station. He stated that they were willing to pay for the materials if Benton County will provide the labor to improve the roads. He said that his clients have agreed to put in a fire station with a house and assist with trucks. He stated that a fire expert had been hired and had already done a substantial portion of the work, but that financial issues had halted progress. He stated that the steps involved needed to be done in order and that his clients still intended to do the things that they had agreed to do.

Mr. Little addressed the outstanding stipulations. He stated that the letter of agreement in the list of stipulations had been discussed with the County Judge, an agreement had been reached, but it has not yet been documented. He stated that the County Judge had failed to provide the documentation thus far. Mr. Little said that the fire letter provided to the Board was "not a complete picture of what's going on," adding that Frankie Elliott (Avoca Fire Chief) informed him that the letter didn't represent the status of the project correctly.

Mr. Little stated that the DEQ wastewater permit is done except for the financial assurance; he was uncertain whether the status of the permit is now on hold or if it has been closed out due to lack of activity. He stated that the DEQ permit application is "approvable" once the developers can supply the necessary financial assurance.

Mr. Little said that the SWPPP permit has been done; he said that he had not been notified of any violations by ADEQ. He noted that one of the local representatives was onsite just a few days before this meeting and that the silt fences were still in place, but tall grass obscured them from view. Mr. Little stated that the agreed-upon improvements to the site are simply on hold until construction financing becomes available. He stated that projects like this are on hold statewide due to financial constraints. He said that the developers remain committed to the project, noting that they could have sold the site and cut their losses, but chose not to do so.

Mr. Little asked the Board to find that there is good cause to grant the extension and to not add any additional stipulations. He pointed out that on page 6 of Staff's "Report to the Benton County Planning Board," there are some additional stipulation requests. He deemed some of them reasonable, but other, such as the completion bond, as unreasonable (Condition A: "The applicant shall submit by August 15, 2008 the required completion bond in the amount of \$100 million dollars for the full completion of the project. The completion bond shall be approved by the Benton County Attorney prior to August 15, 2008 and prior to execution. Benton County shall be the beneficiary of the bond. E & S Development and Properties, LLC shall be the named provider of the bond.") Mr. Little stated that the requested amount of the completion bond is about eight times the amount that it will cost to construct the building. He also stated that thirty days is too short a time to underwrite a completion bond for a project like this. He reiterated that the County is not prepared to completely take a condominium development should it become necessary.

Mr. Little said that condition B ("The applicant shall not do any more work on the project site until all conditions of approval have been met and the Benton County Planning and Development Department has issued an approval letter to the applicant.") is reasonable. He went on to say that the any erosion control issues that might exist (addressed in condition C: "The applicant will correct all issues pertaining to stormwater management and erosion control on-site by August 15, 2008. All methods and materials for stormwater management and erosion control shall be approved and inspected by Benton County Planning & Development and Environmental Services) would be resolved quickly, since the developer would want to avoid ADEQ fines.

Mr. Little protested the placing of a deadline on condition D ("The applicant shall receive approval from the Arkansas Department of Environmental Quality for the proposed wastewater treatment system by December 1, 2008") as unfair "if the national credit issues continue." He said that he found condition E interesting ("The applicant shall, at their own expense, provide for the monitoring and clean-up of the site for illegal dumping of solid waste. The applicant shall submit by August 15, 2008, a copy of a contract for the monitoring and clean-up of solid waste to the Benton County Planning & Development Department"); he stated that Staff wanted his client to perform a police function. He acknowledged that the developers could further secure the project site, but asserted that once a problem is discovered on-site, that it is reported quickly and handled properly.

Mr. Little addressed the last requested condition of approval (F: "If the applicant fails to meet any of the aforementioned conditions of approval for the time extension, and any conditions of approval from the original approval, the approval of the project is void.") He said that this condition went "above and beyond what any of the rules ever state." He stated that it would be reasonable to give notice and give a set amount of time to remedy any violations rather than simply voiding the project.



Mr. Ward asked, "If you're doing the right things, what's the harm in letter E?" Mr. Little answered that the way it is worded makes it seem like the developers must prevent all illegal activity on their property; he reiterated that it puts his client in the position of being police officers.

Ms. Pope interjected, asking if she could "add some clarification." She stated that the intent of condition E was for the applicant to keep the property cleaned up in order to reduce the amount of time and effort required by Benton County personnel. Mr. Henry asked if a copy of a contract with some entity to do the cleanup, but not necessarily the monitoring, on the property would be appropriate; Ms. Pope stated that the purpose of monitoring the property is to ensure that the applicant visits the property regularly to ensure that it is kept clean. Ms. Pope stated that the wording of condition E could be modified, if necessary.

Mr. Ward asked, "Couldn't anybody with an approved project in Benton County, or any county, be litigated against regardless of if the Board approved the project?" Mr. Little answered affirmatively. Mr. Ward then asked if any work is currently being done on the project or if it had been halted; Mr. Little indicated that all work has been halted due to financing issues. Mr. Little then said that it had been mentioned that the project should be "pay as you go", but pointed out that very few Americans own their homes outright and that a smaller percentage of developers pay cash for their developments.

Mr. Henry asked if any of the stipulations had been addressed with anything tangible, such as correspondence or receipts for paid liens. Mr. Little said that he was unaware that these items would be addressed at this meeting, so he was unprepared. He also asserted that, "There are partial lien releases on the County records... how the Staff missed that I don't know, but there's \$240,000 worth of lien releases that were done months ago..." He stated that he would be glad to provide letters from different people giving the status of each of the stipulations.

Mr. Henry stated that he found it unusual that a project of this size was being brought before the Board with no documentation, only explanations. Mr. Little said, "I thought showing two million dollars in improvements on-site and some evidence of that was proof enough." He reiterated that he did not realize that the list of stipulations would be addressed at this meeting; he stated that he felt that he had showed good cause for the time extension to be granted.

Mr. Little stated that the two million dollars of improvements in addition to property acquisitions in the amount of six million dollars in relation to the cost of the first (and only approved) building (15 million dollars) added up to 40%, which he considered a significant amount. He stated that he "did not reach into your minds well enough and see what you'd be looking for tonight."

Mr. Kneebone questioned why the applicant was having difficulty with the construction of one 15-story building within the allotted two-year period when the original plan called for five 25-story buildings; he

pointed out that there had been no “credit crunch” when the project was approved. Mr. Little asked the Board to take into consideration that the construction had been held up in court for a year and that his clients had been affected by market changes.

Ms. Pope showed photographs of the site, pointing out the dirt work, the intended road bed, the drainage system and the sediment pond.

Mr. Sorey asked what the last date that any work was done on-site; Mr. Little did not have the exact dates, but estimated that no progressive work had been done on-site since August of 2007. Mr. Sorey asked Mr. Little to reiterate which conditions of approval that the applicant would find objectionable; the completion bond and the timeline were not acceptable to the applicant. Mr. Little also wanted the items in condition C defined and 60 days to remedy any stormwater or erosion issues rather than the allotted 30 days.

Mr. Sorey expressed concern that due to the work stoppage, the site may not have been properly stabilized; he said, “That SWPPP plan is an ongoing, living, breathing permit and without ongoing, living, breathing maintenance, regardless of any construction activity and the ability to handle that, then the project’s dead, in my opinion.” Mr. Little said that based on what Mr. Sorey said, he thought that 30 days would be a fair amount of time and added that he did not know of any major failures of any silt fences. He stated that the soil stability, other than the proposed roadbeds, should be satisfactory. Mr. Borman suggested that Mr. Little visit the site, adding “You’ve got some issues.”

Mr. Sorey said that the siltation pond onsite is full of silt and that the “roads are cutting to a point where you might as well not have built them in the first place...” He also noted that the required mechanism to monitor the capacity of the siltation pond is non-existent. Mr. Sorey asked Mr. Little about the ADEQ permit and whether ADEQ was literally requiring the applicant to deed over property to the wastewater treatment provider; Mr. Little stated that they are, due to substantial public interest in this project.

Mr. Borman stated that if the financial assurance is all that is keeping ADEQ from issuing a permit to the applicant then ADEQ should have no problem drafting a letter to that effect.

Mr. Sorey addressed condition E, agreeing that the applicant should not have to act like the police, but that they do need to keep their site cleaned up. He stated that the applicants have a very open site which opens them up to liability should anyone injure themselves on the property; he suggested that the applicant could consider gating the entrance to prevent unwanted access. Mr. Sorey stated that he understood the applicant’s objection to condition F, but that the reason for the condition is that there must be some level of activity on the project. Mr. Sorey stated that the land should be re-established and the people who are owed money should be paid.

Mr. Sorey stated that when this project was initially discussed, it was approved subject to some stipulations; he pointed out that if the applicants proceeded, they proceeded at their own risk. Mr. Sorey added that he did not have any issue with voting for a time extension, since it was the same project that was previously approved, but that he did have any issue with the fact that no progress had been made since the approval was given. He stated that either the project needed to move forward or the land needed to be returned to its natural state.

Ms. Pope asked what Mr. Sorey's opinion was of condition F; Mr. Sorey stated that because the timeframe assigned to some of the required items would be beyond the applicant's control (such as ADEQ approval), he thought that this condition was somewhat "tough". He stated that if the applicant did not stop work on the project, he would not have any issue with it taking longer than two years to complete. He felt that the two-year time limit in the regulations were a tool designed to enable municipalities to enforce any new regulations that might have been passed since the previous approval.

Ms. Pope said, "This says that if they don't meet the conditions of approval for the time extension from the original approval, then the project is void... that's the rule for every other project, isn't it?"

Mr. Little objected to having to meet both sets of stipulations; he suggested a grace period to be enforced if the applicant does not make any progress on the project. Ms. Pope stated that that was the purpose of the dates in the conditions of approval.

Mr. Sorey agreed that all of the conditions of approval needed to be met, but that not meeting all of the conditions of approval does not "void the approval of the project in its original approved state." Mr. Borman asked if condition B covered what they were discussing, since the applicant could not proceed with work until the Benton County Planning & Development office gave written permission to do so. Ms. Pope opined that condition F was one that she believed went with every project approved by the Planning Board; Mr. Borman concurred.

Ms. Pope asked for opinions on condition of approval A; she noted that the completion bond was not for an arbitrary amount and some amount of bonding was necessary, if only for remediation of the land. Mr. Kneebone asked if, when the project was originally approved, the applicant had accepted that they would have to put up a completion bond; Ms. Pope answered that they had, but that the applicant believed that it would have to be done when they applied for their building permits. Ms. Pope stated that that was what had been negotiated with the County Attorney.

Mr. Sorey said that, rather than worry about the completion bond, he thought the site needed to be put in order "fairly quickly". He preferred to see a bond put in place for site remediation.

Mr. Ward asked how Mr. Sorey would re-phrase condition A; Mr. Sorey suggested that the bond should equal the estimated cost of infrastructure or the cost of remediating the land. Mr. Ward asked how Staff

arrived at the \$100 million dollar figure in condition A; Ms. Pope answered that it was based on a quote in the newspaper from (Grandview Heights project coordinator) Kevin Harrison.

Mr. Sorey said that the bond for the building should be simple to calculate, since the valuation will need to be provided when the applicant applies for a building permit. He added that an engineer should be able to come up with a figure for the bond for the site work fairly easily. Ms. Pope estimated the site work bond at about five million dollars; Mr. Borman concurred, stating that the applicant had invested roughly 2.5 million to date.

The Board discussed the matter and agreed to give the applicant 60 days instead of the proposed 30 days. Ms. Pope then re-wrote condition A: "The applicant shall submit by September 15, 2008 a required completion bond in the amount of \$5 million dollars for the full completion of the site work..."

Staff recommended denial of the time extension request.

Mr. Sorey addressed condition C; he stated that there should be a rain gauge on-site being monitored and inspected at least every seven days.

The Board members discussed condition B, as well; Mr. Henry suggested that the stormwater management and erosion control work should be excluded from condition B. They agreed that condition B should be amended to read: "The applicant shall not do any more work on the project site, excluding SWPPP activities, until all conditions of approval have been met and the Benton County Planning and Development Department has issued an approval letter to the applicant."

Mr. Sorey asked Mr. Little to submit documentation to which he referred; Ms. Pope addressed Mr. Little, as well, "You said that there were some releases for some of the liens that were not shown by Staff... what ones were you talking about?" Mr. Little stated that there was a plan in place and only \$120, 000 outstanding left to pay (To Mr. Jones' construction company) and \$30, 000 (to Shawki Al-Madhoun of Northstar Engineering). He stated that he had the releases at his office and offered to show them to Staff. Ms. Pope stated that in the course of her research, she found a partial release showing that Mr. Jones had been paid \$120, 000 - the original lien had been for \$477, 000. Mr. Little argued that there should have been three of those partial releases; he stated that he would research the matter. Ms. Pope asked if the materialman's lien for Northstar Engineering was still outstanding; Mr. Little stated that it is.

Ms. Pope asked Mr. Little if he had any comment regarding Hawkins v. Beaver Lake; Mr. Little stated that they were simply protecting their interests and trying to get the lis pendens actions removed.

Mr. Ward asked if Ms. Pope would read through the stipulations and what changes would be made.

Ms. Pope read:

“Should the Board decide to grant a time extension for the project, Staff recommends the following conditions of approval for the time extension:

- a. The applicant shall submit by September 15, 2008 a completion bond in the amount of \$5 million dollars for the full completion of site work. The completion bond shall be approved by the Benton County Attorney prior to September 15, 2008 and prior to execution. Benton County shall be the beneficiary of the bond. E & S Development and Properties, LLC shall be the named provider of the bond.
- b. The applicant shall not do any more work on the project site until all conditions of approval have been met and the Benton County Planning and Development Department has issued an approval letter to the applicant excluding SWPPP activity.
- c. The applicant will correct all issues pertaining to stormwater management and erosion control on-site by August 15, 2008. All methods and materials for stormwater management and erosion control shall be approved and inspected by Benton County Planning & Development and Environmental Services Departments.
- d. The applicant shall submit to Benton County Planning & Development a letter from the Arkansas Department of Environmental Quality stating that the method for wastewater treatment is acceptable and the reason for the previous denial by September 15, 2008.
- e. The applicant shall, at their own expense, provide for the monitoring and clean-up of the site for illegal dumping of solid waste. The applicant shall submit by August 15, 2008, a copy of a contract for the monitoring and clean-up of solid waste to the Benton County Planning & Development Department.
- f. If the applicant fails to meet any of the aforementioned conditions of approval for the time extension, and any conditions of approval from the original approval, the approval of the project is void.

Mr. Little asked to have the language in item F changed from “the project is void” to “the time extension is void.” Mr. Sorey said, “You would have your time extension if we approved it, but you still have other conditions that have to be met and ultimately if you don’t meet those, your project is void.” Mr. Little stated that they were fine with it and that they would meet the timelines.

Mr. Henry asked if restricting access to the site should be addressed while the stipulations are being discussed. Mr. Sorey stated that item E addresses it and whether or not the applicant restricts access is up to them and the onus is on them as property owners to protect themselves from any potential liability; Mr. Borman concurred.

*Mr. Ward made a motion to grant a two-year extension for this project, subject to stipulations a, b, c, d, e and f; Mr. Borman seconded the motion. Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted against the motion; the motion was denied.*

Mr. Sorey informed Mr. Little that the denial of the time extension did not preclude the applicant from bringing the project back before the Board.

#### 8. **Adjournment**

The meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Ashley E. Pope, Planning Director